

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

<b>In re:</b>	:	MDL Docket No. 4:03CV1507-WRW
	:	4:05CV00546
<b>PREMPRO PRODUCTS LIABILITY LITIGATION</b>	:	
	:	
<b>HELEN HILL</b>	:	<b>PLAINTIFF</b>
	:	
<b>v.</b>	:	
	:	
<b>WYETH, et. al.</b>	:	<b>DEFENDANTS</b>

**ORDER**

Pending are Plaintiff's Motion for Partial Summary Judgment Regarding Certain Wyeth Affirmative Defenses (Doc. No. 52) and Motion for Partial Summary Judgment Regarding Certain Upjohn Affirmative Defenses (Doc. No. 56). Defendants have responded.<sup>1</sup> Both motions are GRANTED in PART, DENIED in PART, and MOOT in PART.

**Wyeth's Affirmative Defenses**

Wyeth agreed either to withdraw or voluntarily dismiss every affirmative defense other than those listed below.

1. Affirmative Defense Nos. 2, 3, 6, 7, 9, 12, 25, 26, and 30 are MOOT, since "Wyeth has agreed not to pursue these defenses in this case."<sup>2</sup>

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<sup>1</sup>Doc. Nos. 127, 130.

<sup>2</sup>Doc. No. 53.

2. Affirmative Defense No. 11 -- Laches, Waiver, and Estoppel -- is WITHDRAWN.<sup>3</sup>

3. Affirmative Defense No. 23 -- Liability Without Causation Violates the Constitution -  
- is MOOT, since Plaintiff is not pursuing claims under the ADTPA.

4. Affirmative Defense No. 27 -- Breach of Warranty, No Privity -- is MOOT, since  
Plaintiff is not pursuing claims for breach of warranty.

5. Plaintiff's Motion for Summary Judgment on Affirmative Defense No. 28 -- Act of  
God -- is GRANTED.

6. Plaintiff's Motion for Summary Judgment on Affirmative Defense No. 32 --  
Punitive Damages are Unconstitutional Due to Lack of Standards -- is DENIED without  
prejudice

### **Upjohn's Affirmative Defenses**

Upjohn agreed either to withdraw or voluntarily dismiss every affirmative defense other  
than those listed below. As to the remaining affirmative defenses:

1. Plaintiff's Motion for Summary Judgment on Affirmative Defense No. 27 --  
*Noerr-Pennington* Doctrine -- is taken under "advisement." It doesn't appear to me that the  
*Noerr-Pennington* Doctrine applies to the facts of this case. However, if this affirmative defense  
becomes an issue, the parties may re-argue its applicability at trial -- before any evidence is  
presented on the matter.

2. Plaintiff's Motion for Summary Judgment on Affirmative Defense No. 31 --  
Assumption of Risk -- is DENIED without prejudice. As Defendant recognizes, this affirmative

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<sup>3</sup>Doc. No. 127.

defense is quite limited, and the scope of Defendant's affirmative defense can be better addressed at trial.

3. Plaintiff's Motion for Summary Judgment on Affirmative Defense Nos. 43, 48 -- Punitive Damages -- is DENIED without prejudice.

IT IS SO ORDERED this 29th day of October, 2007.

/s/ Wm. R. Wilson, Jr.  
UNITED STATES DISTRICT JUDGE